

From: Dave Kjar
To: Microsoft ATR
Date: 11/17/01 4:32am
Subject: Microsoft Antitrust Remedies

Dear Sir or Madame,

Please accept my comments as a concerned US citizen pertaining to the proposed remedies in the ongoing Microsoft anti-trust litigation. I consider myself an informed and conservative opinion. I have 20 years of computer software and hardware development experience, a degree in Electrical Engineering, and focused experience using and developing for Microsoft's systems as well as for their competitor's.

A remedy such as is proposed simply requires Microsoft to 'sin no more' and is inadequate because:

1. This is not the first ruling of anti-competitive behavior. If Microsoft chooses not to comply, it would not be the first time that such remedies would be ignored by that company. Microsoft has in the past show no sign of a conscience when it ignored previous remedies and invented additional methods to squelch competition.

2. There is no apparent financial incentive for the company to comply, based on the precedent set by this and previous light actions against the company. Microsoft is clearly placed a regime where crime pays, handsomely.

Since previous judgements were levied, Microsoft has "innovated" the art of squelching its competition in ways that are not addressed by the remedies. Examples include:

Frontpage licensing, which prevents the publishing of information critical of Microsoft.

SDK licensing, which prevents alternative compiler tools to be used.

OEM agreements, hidden behind a woefully mis-applied veil of "trade secret."

SQL Server licensing, which disallows publishing of performance data.

Requiring licensees to disclose participation in

government investigations, as noted by Texas' Attorney General in 1997.

Impending expiration of licensing and support for older operating systems.

Nearly all Microsoft application licenses, which specifies Microsoft operating systems, and does not allow for emulated or competing systems.

Misinformation in public statements, regarding competitors licenses (recently Novell) and common free licenses (as GPL and Berkeley).

Corporate perjury, as in the falsification of evidence presented in the USDOJ trial.

Very few of the above list of infractions are prevented by the USDOJ's purported remedy. Again, market forces alone cannot correct the above situations, since Microsoft has monopolized PC software infrastructure market.

The remainder of practices actually addressed by the ruling are weakened by loopholes in which the ruling's terminology is explicitly left to the interpretation of the convict! This freedom of interpretation must be removed from any effective remedy.

A far more effective remedy would be to separate the part of Microsoft that sells to the infrastructure market from the divisions of Microsoft that compete in creating applications that run on that infrastructure. Note that this would not devalue a legally operating corporation, since the court has ruled that the markets are separate. (In fact, the only way that it could actually devalue the company is in the way it deters product tying, monolithic integration, and abusive licensing practices to continue.)

I wonder, will the USDOJ's policy against criminals, as displayed by this proposed remedy, be applied to drug pushers? Under such application, a man guilty of selling crack, heroin, marijuana, and speed would be convicted of possessing marijuana and speed, and be sentenced to a handshake and a promise not to use anything the convict believes is marijuana for 5 years.

I have personally been injured by Microsoft's conduct. Over the past 6 years I bought 2 leading edge computer systems,

actively seeking for vendors that would sell me the hardware without the cost of Microsoft OS added in. In each case, I was unable to find a vendor that could meet my specifications without buying unneeded software from Microsoft. I estimate that Microsoft's practices robbed me of \$500.

It is obvious that, unless it seeks additional remedies of a punitive and structural nature, the Justice Department will fail to perform its duties in upholding the law of the land, and in acting in the interest of the citizenry. Do not make our government a party to the robbery.

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Dave Kjar <dave@kjar.org>
7427 Castle Wood
San Antonio, TX 78218